

## Chapter ATCP 74

### LOCAL AGENTS AND REGULATION

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**Note:** Chapter HSS 192 was renumbered to Chapter HFS 192 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, August, 1998, No. 512. Chapter HFS 192 was renumbered chapter DHS 192 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637. **Chapter DHS 192 was renumbered subchapter I of chapter ATCP 74 under s. 13.92 (4) (b) 1., Stats., Register June 2016 No. 726.**

**Note:** Subchapter II of chapter ATCP 74 was renumbered from subchapter III of chapter ATCP 75 under s. 13.92 (4) (b) 1., Stats., Register June 2016 No. 726.

**Note:** Chapter 74 (title) was created under s. 13.92 (4) (b) 2., Stats., Register June 2016 No. 726.

**Note:** Effective 7–1–16, 2015 Wis. Act 55 amended the word “permit” in ch. 254, stats., to become “license” in ch. 97, stats., and all references in this chapter to “permit” mean “license” for the purpose of licensing, regulation, and enforcement of this chapter by the department.

#### Subchapter I – Cities, Counties, and Villages Designated as Agents of the Department for Public Health Protection Purposes

**ATCP 74.01 Authority and purpose.** This subchapter is promulgated under the authority of s. 97.615 (2) (b), Stats., to provide standards for villages, cities, and counties designated by the department to be its agents in issuing permits to and making investigations and inspections of hotels and motels, tourist rooming houses, restaurants, bed and breakfast establishments, campgrounds, including camping resorts, recreational and educational camps, mobile home parks, and public swimming pools, and in making investigations and inspections of food vending machines, their operators, and vending machine commissaries.

**Note:** Effective 7–1–16, pursuant to 2015 Wis. Act 55, mobile home parks are not under the authority of the department for inclusion as facilities that may be licensed, inspected, and investigated by local health department agents.

**History:** Cr. Register, January, 1988, No. 385, eff. 2–1–88; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476; **renum. from DHS 192.01 Register June 2016 No. 726; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.**

**ATCP 74.02 Applicability.** This subchapter applies to a village, city, or county designated as an agent of the department or applying for agent status.

**History:** Cr. Register, January, 1988, No. 385, eff. 2–1–88; **renum. from DHS 192.02 Register June 2016 No. 726; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.**

#### ATCP 74.03 Definitions. In this subchapter:

(1) “Agent” means a village, city, or county which has organized or appointed a county, city and county, or multiple county health department under s. 251.02, Stats., a health commission or committee under s. 141.01, 1991 Stats., a city board of health or health officer under s. 141.015, 141.02 or 141.04, 1991 Stats., or a community human services board under s. 46.23, Stats., has a population greater than 5,000, and has entered into an agent agreement with the department.

(2) “Agent agreement” means a written agreement authorized by s. 97.615, Stats., between the department and a village, city or county, whereby the village, city or county is authorized to enforce, on behalf of the department, subchs. III and IV of ch. 97, Stats., and related administrative rules.

(3) “Department” means the Wisconsin department of agriculture, trade and consumer protection.

(4) “Facility” means a hotel or motel, tourist rooming house, restaurant, bed and breakfast establishment, food vending machine, or vending machine commissary under subch. III of ch. 97, Stats., or a camping resort or other campground, recreational camp, educational camp, mobile home park or public swimming pool under s. 97.67, Stats.

(5) “Fiscal year” means the state fiscal year, July 1 through the following June 30.

(6) “New agent” means a village, city or county that has applied for and has been granted agent status for the first time, or a village, city, or county that has reapplied for and has been granted agent status after termination of the original agent agreement.

(7) “Registered sanitarian” means a sanitarian registered under s. 440.98, Stats., and chs. SPS 174 to 177.

(8) “Related administrative rules” means department rules that implement subchs. III and IV of ch. 97, Stats., namely, chs. ATCP 72 to 79, or equivalent or more stringent local requirements.

**History:** Cr. Register, January, 1988, No. 385, eff. 2–1–88; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476; correction in (7) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 2001, No. 546; corrections in (3), (7) and (8) made under s. 13.92 (4) (b) 6. and 7., Stats., Register January 2009 No. 637; correction in (7) made under s. 13.92 (4) (b) 7., Stats., Register March 2011 No. 663; correction in (7) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671; **renum. from DHS 192.03 Register June 2016 No. 726; correction in (intro.) (2), (4), (8) made under s. 13.92 (4) (b) 7., Stats., correction in (3) made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726.**

**ATCP 74.04 Agent status. (1)** AGENT PLAN FOR ADMINISTRATION AND ENFORCEMENT. A village, city, or county wishing to become a new agent shall enter into an agent agreement with the department by submitting a written proposal to the department which shall include a plan for the administration and enforcement of subchs. III and IV of ch. 97, Stats., and related administrative rules. The plan shall include, at minimum:

(a) Identification of the agency or agencies of village, city, or county government that will issue permits and conduct investigations and inspections;

(b) A description of the projected staffing and budget for issuing permits, making investigations and inspections, providing technical assistance, and enforcing applicable state rules and local ordinances;

(c) A list of the fees to be charged by the village, city, or county for facilities issued permits under the agent agreement;

(d) A description of the proposed permit issuance and record-keeping system to be maintained by the village, city, or county under the agent agreement;

(e) A declaration that the village, city, or county granted agent status will contract with the department, as permitted by s. 97.615 (2) (dm), Stats., if the village, city or county wants the department to collect fees and issue permits;

(f) A description of the proposed inspection and enforcement program to be implemented by the village, city, or county, with a copy of the applicable city or county ordinance;

(g) A plan of action to ensure that there will be cooperation with appropriate federal, state, and local agencies in the event of a natural disaster or other emergency;

(h) Procedures for the investigation and follow-up of citizen complaints about facilities that were issued permits under the agent agreement;

(i) Procedures for the investigation and follow-up of reports of suspected foodborne illness;

(j) The time period within which the village, city, or county will make a determination on an application for a permit. The time period may not exceed 30 days following receipt of a complete application;

(k) An assurance of continued support by the village, city, or county for carrying out the agent agreement; and

(L) Any other information which the department considers necessary or relevant for its review of a village, city, or county plan.

**(2) DEPARTMENT REVIEW OF AGENT PLAN.** The department shall review the agent's plan under sub. (1) for completeness and for the adequacy and appropriateness of the proposed program, fee schedules and procedures for proper administration and enforcement of subchs. III and IV of ch. 97, Stats., and related administrative rules.

**(3) AGENT AGREEMENT.** If the department approves the agent's plan, the department shall prepare an agent agreement. The agent agreement shall be signed by both parties. By signing the agent agreement, the village, city, or county agrees to comply with this subchapter. In return, the department authorizes the village, city or county to enforce, on behalf of the department, subchs. III and IV of ch. 97, Stats., and related administrative rules.

**(4) IMPLEMENTATION OF AGREEMENT.** (a) *Dependent on local ordinance.* The implementation of the agent agreement shall be contingent on the village, city, or county adopting an ordinance that incorporates the department's rules by reference or an ordinance that consists of requirements which are at least as stringent as those in the department's rules and do not conflict with those rules. Nothing in this subchapter shall prevent a village, city, or county from adopting more stringent requirements.

(b) *Agent authority and responsibility.* Upon both parties signing the agent agreement, the agent shall have the authority and responsibility to enforce provisions of subchs. III and IV of ch. 97, Stats., and related administrative rules.

(c) *Department discontinuation of activities.* Upon execution of an agent agreement, the department shall discontinue all permit issuance and enforcement activities under subchs. III and IV of ch. 97, Stats., in the area of the agent's jurisdiction for the period of the agreement, except as provided in s. ATCP 74.07 (4) and s. 97.615 (2) (h), Stats.

(d) *Duration and amendment.* An agent agreement shall continue in effect until terminated by the agent or terminated, suspended or revoked by the department pursuant to s. ATCP 74.11. An agent agreement may be amended by the written agreement of both parties.

(e) *Permit issuance and inspection.* The agent shall issue permits to facilities and make investigations and inspections of facilities as specified in the agent agreement.

**History:** Cr. Register, January, 1988, No. 385, eff. 2-1-88; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476; **renum. from DHS 192.04 Register June 2016 No. 726; correction in (1) (intro.), (e), (2), (3), (4) (a) to (d) made under s. 13.92 (4) (b) 7., Stats., and correction in numbering in (4) (c) made under s. 13.92 (4) (b) 1., Stats., Register June 2016 No. 726.**

**ATCP 74.05 Staffing. (1) HIRING CRITERIA.** The agent's inspection staff shall meet hiring criteria set forth in local ordinances and personnel policies and the educational or experience requirements established for sanitarian registration under chs. SPS 174 to 177.

**(2) REGISTERED SANITARIAN.** Inspections shall be made by a sanitarian registered under chs. SPS 174 to 177 or by a person supervised by a Wisconsin registered sanitarian. The person making inspections shall be working to obtain registration under chs. SPS 174 to 177 if he or she is not already a registered sanitarian.

**(3) PERSONNEL CHANGES.** Within 10 days after the date on which it takes place, the agent shall report to the department in writing any change in the assignment of a supervisor of the inspection staff who are not currently Wisconsin registered sanitarians and any change in the organization of the inspection staff including authority line changes. For those agents employing only one or 2 sanitarians, the agent shall also report any change in assignment of inspection staff who are providing services under the agent agreement.

**History:** Cr. Register, January, 1988, No. 385, eff. 2-1-88; corrections in (1) and (2) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 2001, No. 546; corrections in (1) and (2) made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637; correction in (1), (2) made under s. 13.92 (4) (b) 7., Stats., Register March 2011 No. 663; correction in (1), (2) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671; **renum. from DHS 192.05 Register June 2016 No. 726.**

**ATCP 74.06 Inspections. (1) MINIMUM NUMBER OF INSPECTIONS.** The agent shall conduct one or more inspections of each facility within the jurisdiction of the agent each fiscal year to determine the facility's compliance with subchs. III and IV of ch. 97, Stats., and related administrative rules.

**(2) INSPECTION BEFORE ISSUANCE OF PERMIT.** Before issuing a permit to a new facility or to a facility that has changed operators, the agent shall inspect the facility. Every inspection before issuance of a permit shall be conducted before the operator opens for business. The agent may not knowingly allow a facility to operate unless the facility has been properly issued a permit.

**(3) INSPECTION PRIORITIES.** The agent shall give inspections that are made prior to issuance of permits and emergency complaint inspections priority over routine inspections.

**(4) INSPECTIONS BY THE DEPARTMENT.** The department may conduct an inspection of a facility in an agent's jurisdiction in response to an emergency, for the purpose of monitoring and evaluating the agent's permit issuance, inspection and enforcement program, or at the request of the agent. The department shall make a reasonable effort to notify the agent before an inspection is conducted.

**History:** Cr. Register, January, 1988, No. 385, eff. 2-1-88; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476; **renum. from DHS 192.06 Register June 2016 No. 726; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.**

**ATCP 74.07 Enforcement. (1) ACTION FOR ENFORCEMENT.** The agent shall take necessary and reasonable action to enforce subchs. III and IV of ch. 97, Stats., and related administrative rules for the types of facilities for which the agent has been delegated agent status, and shall incur the costs of these actions. The department shall provide technical assistance in enforcement to agents on request.

**(2) ENFORCEMENT ACTIVITIES.** The agent shall use state statutes, administrative rules and any applicable local ordinances in its enforcement activities. Enforcement actions may include revocation, suspension, fines, orders to close, temporary or final

hold orders on equipment, food, processes, or facilities and conditional permits.

**(3) ENFORCEMENT NOTIFICATION.** The agent shall notify the department in writing within 10 days after taking any enforcement action involving permit suspension or revocation or court action. The department shall assist agents in enforcement activities upon request.

**(4) DEPARTMENT ENFORCEMENT ACTION.** In the event that the agent has been notified by the department of any deficiency on the part of a facility under its jurisdiction in complying with this subchapter and has had reasonable opportunity to take enforcement action, but has either neglected to act expeditiously in taking appropriate enforcement action or has determined not to take enforcement action, the department may act under s. 97.65, Stats., to enforce this subchapter.

**History:** Cr. Register, January, 1988, No. 385, eff. 2-1-88; correction in (1) and (4) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 2001, No. 546; **renum. from DHS 192.07 Register June 2016 No. 726; correction in (1), (4) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.**

**ATCP 74.08 Reports and records. (1) RETENTION OF RECORDS AND NOTIFICATION.** The agent shall retain copies of all reports of investigations and inspections and all orders for at least 3 years after completion and longer if required by applicable statutes or local ordinances. Inspection report forms approved by the department shall be used for all pre-licensing, routine, and follow-up inspections. When a permit is issued for a new facility or for a facility that has changed operators, the department shall be notified as indicated in the agent agreement.

**(2) REPORTS TO THE DEPARTMENT.** The agent shall submit reports as requested by the department. The department may review or request a copy of any inspection report, correspondence, or order on any facility in the area of the agent's jurisdiction, and any other report the department determines that it needs to monitor agent performance or keep informed about program activities and the regulated facilities.

**(3) RECORD MAINTENANCE.** The agent shall maintain current records of facilities that have been issued permits. These records shall be maintained as required by the department in the agent agreement.

**(4) IDENTIFICATION.** The department shall provide the agent with an identification number for each new facility.

**(5) INITIAL INSPECTION REPORTS.** By the 10th of each month after the month in which the agent issues a permit or receives notification from a facility of a change affecting the permit, the agent shall provide to the department a copy of the report of the inspection made before issuance of the permit, or a copy of the agent change form, FD 293, or of the notification of change, in order for the department to maintain current records of facilities that are issued permits in the area of the agent's jurisdiction. Temporary restaurants as defined in s. ATCP 75.103 (7) are included in this reporting requirement.

**(6) LIST OF OPERATORS.** By September 1 of each year, the agent shall provide the department with a complete list of the names and addresses of operators of facilities that were issued permits by the agent during the previous fiscal year.

**(7) AGENT COSTS.** The agent shall keep and shall provide to the department on request records showing the cost of issuing permits to, making investigations and inspections of, and providing education, training and technical assistance to facilities, and the cost of enforcing applicable state statutes and rules and local ordinances. The program fees collected by an agent may not exceed the reasonable costs incurred by the agent. A summary report on all costs for providing services required under the agent agreement and on all program fees collected by the agent shall be sent to the department upon request.

**Note:** An agent's use of the electronic HealthSpace system constitutes compliance with this section.

**History:** Cr. Register, January, 1988, No. 385, eff. 2-1-88; correction in (5) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 2001, No. 546; correction in (5) made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637; **renum. from DHS 192.08 Register June 2016 No. 726; corrections in (5) made under s. 13.92 (4) (b) 6. and 7., Stats., Register June 2016 No. 726.**

**ATCP 74.09 Reimbursements and other payments for services. (1) REIMBURSEMENT OF AGENTS FOR VENDING INSPECTIONS.** (a) By September 30 of each year, the department shall reimburse agents for inspecting vending machine commissaries and vending machines during the previous fiscal year, as required under ss. 97.607 (2) and 97.615 (1), Stats. The department shall provide agents with information on how to request reimbursement.

(b) Fee reimbursements for the inspection of vending machines that have been moved from one agent's jurisdiction to another shall be credited to the agent making the first inspection during the fiscal year.

**(2) REIMBURSEMENT OF THE DEPARTMENT FOR STATE FEES COLLECTED.** By September 30 of each year, each agent shall reimburse the department for state fees collected by the agent during the previous fiscal year, as required under s. 97.615 (2) (e), Stats., and shall provide a complete roster of all permits issued by the agent during the preceding fiscal year and a reimbursement summary showing all amounts reimbursed by facility type. The department shall use this information to confirm the amount of reimbursement due the department.

**(3) PAYMENT TO THE DEPARTMENT FOR COLLECTING FEES AND ISSUING PERMITS.** If an agent has contracted with the department under s. 97.615 (2) (dm), Stats., and s. ATCP 74.04 (1) (e) for the department to collect fees and issue permits, the agent shall pay the department for the actual and reasonable cost of providing these services.

**History:** Cr. Register, January, 1988, No. 385, eff. 2-1-88; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476; **renum. from DHS 192.09 Register June 2016 No. 726; correction in (1) (a), (2), (3) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.**

**ATCP 74.10 Expiration of permits.** All permits issued by the agent under subchs. III and IV of ch. 97, Stats., shall expire annually on June 30th.

**History:** Cr. Register, January, 1988, No. 385, eff. 2-1-88; correction made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476; **renum. from DHS 192.10 Register June 2016 No. 726; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.**

**ATCP 74.11 Termination, revocation or suspension of agent agreement. (1) TERMINATION.** An agent may terminate the agent agreement upon 90 days written notice to the department. The notice shall specify the reasons for termination and the last day that the [village,] city, or county will have agent status.

**Note:** The bracketed "village" was unintentionally omitted from the agency's order promulgating this rule. See the definitions of "agent" and "agent agreement" in s. ATCP 74.03 (1) and (2).

**(2) REVOCATION.** If the department finds that the agent has failed to comply with this subchapter or with the terms and conditions of the agent agreement, the department may revoke agent status as provided in s. 97.615 (2) (b), Stats., upon 90 days written notice to the agent. The notice shall specify the reasons for revocation and the last day that the village, city, or county will have agent status.

**(3) SUSPENSION.** If the department finds that suspension of the agent agreement is necessary to protect the public's health or safety, the department may immediately suspend the agent agreement upon notice to the agent. The department shall hold a hearing if requested by the agent. If a hearing is requested, the hearing will be held within 15 days after the department receives the request. The suspension shall remain in effect until the final hearing decision is issued. In lieu of a suspension, the department may



notify the agent of any deficiencies in the agent's inspection and permit issuance program and establish a deadline for correction of the deficiencies.

**History:** Cr. Register, January, 1988, No. 385, eff. 2–1–88; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476; **renum. from DHS 192.11 Register June 2016 No. 726; correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.**

**ATCP 74.12 Evaluation and training. (1) ANNUAL EVALUATION.** The department shall annually evaluate the performance of each agent. A uniform method shall be employed to evaluate agents and state staff. The evaluation shall include:

(a) A survey of a random sample of facilities licensed by the agent under the agent agreement;

(b) A review of records dealing with inspections, enforcement actions, consumer complaints, and epidemiological investigations; and

(c) A review of licensing, recordkeeping, and reporting procedures followed by the agent under the agent agreement.

**(2) ADDITIONAL EVALUATIONS.** In addition to the annual evaluation under sub. (1), the department may at any time perform any additional evaluations of an agent's performance.

**(3) TECHNICAL ASSISTANCE AND TRAINING.** (a) Upon request of an agent, the department shall provide technical assistance to the agent's staff and shall train the agent's staff.

(b) The agent shall cooperate with the department in conducting training programs for operators and employees of facilities located in the area of the agent's jurisdiction.

**History:** Cr. Register, January, 1988, No. 385, eff. 2–1–88; **renum. from DHS 192.12 Register June 2016 No. 726.**

**ATCP 74.13 Waivers.** The department may, in its discretion, waive a requirement of this subchapter if the department determines that the waiver will not adversely affect the health, safety or welfare of the public and that strict enforcement of the requirement would result in unreasonable hardship for the agent. The department may condition the grant of a waiver upon the performance by the agent of alternative measures.

**History:** Cr. Register, January, 1988, No. 385, eff. 2–1–88; **renum. from DHS 192.13 Register June 2016 No. 726; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.**

## Subchapter II — Local Regulation of Retail Food Establishments

**Note:** See s. ATCP 75.01 for definitions.

### ATCP 74.21 Retail food program; agent agreement.

**(1) AUTHORITY.** (a) The department may enter into an agent agreement with a local health department, under which the department authorizes the local health department to administer a retail food program as the department's local agent. An agent agreement may authorize the local agent to do any of the following as part of the local agent's retail food program within the local jurisdiction:

1. License and inspect retail food establishments that are required to be licensed under s. ATCP 75.03. A local agent shall use license forms approved by the department. The local agent may deny, suspend or revoke a license as provided in s. ATCP 75.04.

2. Inspect retail food establishments that are not required to be licensed under s. ATCP 75.03.

3. Investigate food-related consumer complaints involving retail food establishments.

4. Enforce subch. II of ch. ATCP 75 and other state food safety laws identified in the agent agreement.

5. Review retail food establishment construction and remodeling plans pursuant to s. ATCP 75.03 (8).

6. Exercise other authority delegated by the department under s. 97.41, Stats., and the agent agreement.

**Note:** Paragraph (a) does not limit a local health department's authority to do any of the following:

1. Enforce additional local ordinance requirements related to retail food establishments.

2. Regulate restaurants, hotels or vending machine commissaries pursuant to an agreement with the Wisconsin department of health services under s. 97.615, Stats.

(b) An agent agreement takes effect on the date specified in the agreement, and continues in effect until terminated by the local agent or the department. During the term of the agreement, the department may not perform in the local jurisdiction any of the activities that the local agent agrees to perform under the agreement, except as provided in s. 97.41 (8), Stats., or the agent agreement.

(c) Upon request by a local agent, or as provided in the agent agreement, the department may assist the local agent in an inspection, investigation, enforcement action, plan review, or other activity under the agent agreement.

**(2) LOCAL APPLICATION FOR AGREEMENT.** A local health department that wishes to enter into an agent agreement shall submit a written application to the department, in a form specified by the department. The application shall include a complete plan for the retail food program that the local health department proposes to implement under the agreement. The plan shall include all of the following:

(a) The proposed coverage of the program.

(b) The functions that the local health department proposes to perform under the program.

(c) Projected local staffing and budget for the program, including staffing and budget for inspection and enforcement.

(d) The entities that the local health department proposes to license under the program, and the approximate license fees that the local health department proposes to charge.

**Note:** A local ordinance may combine and expand license categories, as long as those categories include all of the retail food establishments that are required to be licensed under s. ATCP 75.03 and the agent agreement. A local ordinance may establish local license fees that differ from the fees charged under s. ATCP 75.03 (3) for licenses issued by the department. However, license fees must be based on the local agent's reasonable program costs. See sub. (4) (c) and s. 97.41 (4), Stats.

(e) A description of the proposed licensing and recordkeeping system that the local health department proposes to maintain under the program.

(f) A description of the proposed inspection and enforcement program that the local health department proposes to implement under the program.

(g) Proposed procedures for coordinating with federal, state and local agencies in the event of an emergency or disaster.

(h) The procedures that the local health department will use to grant or deny retail food establishment license applications, and the time periods within which the local health department will grant or deny a complete application. Procedures and time periods shall be consistent with those provided in s. ATCP 75.03 (5) to (7).

(i) Reasonable assurance that the local health department will provide continuing adequate funding and other support for the program.

(j) Other information, required by the department, which is reasonably necessary or relevant to the department's review of the application.

**(3) DEPARTMENT ACTION ON LOCAL APPLICATION.** The department shall grant or deny an application under sub. (2) within 60 days after the department receives a complete application.

**(4) AGREEMENT TERMS AND CONDITIONS.** (a) An agent agreement shall do all of the following:

1. Clearly describe the retail food licensing program that the local agent agrees to implement. The program shall comply with applicable requirements under this subchapter.

2. Provide for full and adequate enforcement of subch. II of ch. ATCP 75 and other laws identified in the agreement.

(b) An agent agreement may incorporate, by reference, information contained in the application under sub. (2).

(c) Retail food establishment license fees charged by a local agent may exceed the amounts specified in s. ATCP 75.03 (3), but the amount of license fees collected less the amount paid to the department under s. ATCP 74.26 (2) may not exceed an amount reasonably required to cover the local agent's program costs under s. ATCP 74.25 (2).

**Note:** See s. 97.41 (4), Stats.

**(5) REVIEW AND EVALUATION.** The department shall periodically review and evaluate a local agent's implementation of an agent agreement, as provided in s. ATCP 74.27.

**(6) AMENDMENTS.** An agent agreement may be amended at any time, by agreement of the parties.

**(7) TERMINATION BY LOCAL AGENT.** A local agent may terminate an agent agreement by giving 90 days prior written notice to the department.

**(8) TERMINATION BY DEPARTMENT.** (a) If the department finds that a local agent has failed to comply with the terms of the agent agreement, the department may by written notice terminate the agreement. The termination notice shall specify the termination date and reasons for termination.

(b) A notice under par. (a) may terminate an agent agreement immediately, without prior notice, if the department finds that immediate termination is necessary in an emergency to protect the public health, safety or welfare.

(c) The department may issue a warning notice to a local agent, stating that the department may terminate an agent agreement if the local agent fails by a specified date to correct deficiencies identified in the warning notice.

**History:** CR 07-093; cr. Register December 2008 No. 636, eff. 1-1-09; correction to numbering in (1) (a) 4. to 6. made under s. 13.92 (4) (b) 1., Stats., Register December 2008 No. 636; **renum. from ATCP 75.06 Register June 2016 No. 726; correction in (4) (a) 1., (c), (5) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.**

**ATCP 74.22 Local agent staff. (1) STAFF NUMBERS; QUALIFICATIONS AND EQUIPMENT.** A local agent shall employ adequate staff to implement the retail food program described in the agent agreement. One or more registered public health sanitarians, employed by the local agent, shall perform or directly supervise all retail food establishment inspections under the program. The local agent shall provide appropriate equipment to inspection personnel, as provided in the agent agreement.

**(2) TRAINING IN STANDARD PROCEDURES.** The department shall train one or more registered public health sanitarians employed by each local agent, so that the sanitarians can apply standard inspection procedures prescribed by the department and if necessary teach those procedures to other inspectors employed by the local agent. The department shall evaluate its trainees, to ensure that they understand and can apply and teach the standard inspection procedures. The department may, from time to time, update standard inspection procedures.

**(3) DEPARTMENT ASSUMES NO LIABILITY.** The department assumes no liability for the job safety or welfare of a local agent's employees, or for the actions or omissions of the local agent's employees, except as otherwise provided by law.

**History:** CR 07-093; cr. Register December 2008 No. 636, eff. 1-1-09; **renum. from ATCP 75.07 Register June 2016 No. 726.**

**ATCP 74.23 Inspections. (1) GENERAL.** A local agent shall inspect retail food establishments for compliance with subch. II of ch. ATCP 75 and other laws identified in the agent agreement. A local agent shall use standard inspection procedures that the department may, from time to time, prescribe.

**(2) LICENSED RETAIL FOOD ESTABLISHMENTS; INSPECTION FREQUENCY AND SCOPE.** A local agent shall conduct at least one unannounced inspection per year at each licensed retail food establishment, unless the agent agreement specifies a different inspection

frequency. The inspection shall evaluate all of the following, subject to the terms of the agent agreement:

- (a) License status and overall sanitation.
- (b) Food sources, transportation, and storage.
- (c) Food preparation, holding, and display, including temperature control if applicable.
- (d) Equipment and utensils, including storage procedures.
- (e) Cleaning and sanitizing procedures.
- (f) Waste disposal.
- (g) Insect and rodent control.
- (h) Personal hygiene.
- (i) Lighting, ventilation, and water temperature.
- (j) Other matters identified in the agent agreement.

**(3) INSPECTION-RELATED TASKS.** A local agent shall do all of the following as part of an inspection under this section:

- (a) Collect food and water samples as necessary.
- (b) Prepare an inspection report that identifies law violations, if any, and specifies correction deadlines. The inspector shall use an inspection report form approved by the department. The inspector shall provide a copy of the inspection report to the operator of the retail food establishment. If possible, the inspector shall discuss the report with the operator and obtain a receipt acknowledgment from the operator.
- (c) Conduct timely reinspections, as necessary, to determine whether violations have been corrected.

**History:** CR 07-093; cr. Register December 2008 No. 636, eff. 1-1-09; **renum. from ATCP 75.08 Register June 2016 No. 726; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726; correction in (3) (c) made under s. 35.17, Stats., Register June 2016 No. 726.**

**ATCP 74.24 Complaint investigations. (1) GENERAL.** Except as provided in sub. (2), a local agent shall investigate every food-related complaint that it receives against a retail food establishment under its jurisdiction. The local agent shall prioritize and investigate complaints according to established complaint handling and investigation procedures. The following types of complaints shall be treated in descending order of priority:

- (a) If a complaint alleges facts that indicate a serious or imminent public health hazard, the local agent shall investigate immediately.
- (b) If a complaint alleges facts that indicate a potential public health problem, but not a serious or imminent public health hazard, the local agent shall investigate as soon as practicable.
- (c) If a complaint has no public health significance, the local agent may investigate the complaint when time permits.

**(2) COORDINATION WITH OTHER AGENCIES.** A local agent shall notify and consult with the department and other affected agencies having jurisdiction, as necessary, related to complaints that may be of significant concern to those agencies. A local agent shall coordinate complaint investigations, as necessary, with other agencies having jurisdiction.

**History:** CR 07-093; cr. Register December 2008 No. 636, eff. 1-1-09; **renum. from ATCP 75.09 Register June 2016 No. 726**

**ATCP 74.25 Records and reports. (1) GENERAL.** (a) A local agent shall keep complete and accurate records of its activities under an agent agreement, including complete and accurate records of all licenses and license holders, license fee revenues, inspections, complaints, investigations, enforcement actions, and program costs.

(b) A local agent shall retain a copy of each record, in electronic or hard copy form, for at least 3 years.

(c) Upon termination of an agent agreement, a local agent shall file with the department copies of records that are relevant to the local agent agreement or the regulation of retail food establishments.

**(2) COST DOCUMENTATION.** A local agent shall document the cost of the retail food program that it administers under the agent

agreement. The cost may include direct costs for licensing, inspection, complaint handling, investigation, enforcement, information management, reporting, and other activities under the program, as well as indirect costs reasonably allocated to the program. Costs may include staff, equipment, facility, contract service, and other costs reasonably allocated to the program.

**(3) REPORTS TO THE DEPARTMENT.** (a) A local agent shall report information to the department upon request, and shall make information available to the department for inspection and copying upon request.

(b) A local agent shall file a monthly report with the department, by the 10th day of each month. The report shall identify all of the following:

1. All retail food establishments newly licensed during the preceding month.

2. All changes in the license status of retail food establishments during the preceding month.

(c) A local agent shall promptly notify the department, in writing, whenever the local agent takes formal enforcement action against a retail food establishment. A formal enforcement action includes a court complaint, an enforceable administrative order, or an action to suspend or revoke a license, but does not include a warning notice. The local agent shall include, with its notice to the department, a copy of the relevant court complaint, administrative order, or license action.

**History:** CR 07-093: cr. Register December 2008 No. 636, eff. 1-1-09; **renum. from ATCP 75.10 Register June 2016 No. 726.**

#### **ATCP 74.26 Reimbursement of department costs.**

**(1) FISCAL YEAR.** The fiscal year under an agent agreement begins on July 1 and ends on June 30, except as otherwise provided in the agent agreement.

**(2) PAYMENT TO DEPARTMENT.** By September 30 of each year, a local agent shall pay to the department, for each retail food establishment licensed by the local agent during the preceding fiscal year, the following applicable fee:

(a) A fee equal to 10% of the license fee provided in s. ATCP 75.03 (3), regardless of the license fee actually charged by the local agent, if the local agent prepares and submits to the department by September 30 of that year an annual self assessment as required by s. ATCP 74.27 (1).

(b) A fee equal to 20% of the license fee provided in s. ATCP 75.03 (3), regardless of the license fee actually charged by the local agent, if the local agent fails to submit to the department by September 30 of that year an annual self-assessment as required by s. ATCP 74.27 (1). A fee payment under this paragraph does not exempt the local agent from the duty to prepare and submit an annual self-assessment.

**History:** CR 07-093: cr. Register December 2008 No. 636, eff. 1-1-09; **renum. from ATCP 75.11 Register June 2016 No. 726; correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.**

**ATCP 74.27 Review and evaluation. (1) ANNUAL EVALUATION.** At least once each year, the department shall review and evaluate a local agent's implementation of its agent agreement with the department, and the local agent shall submit a self-assessment in a format determined by the department. The department's review and evaluation may be based, in part, upon the self-assessment and may include all of the following:

(a) The terms of the agent agreement, and a renegotiation of terms if necessary.

(b) Local agent compliance with the terms of the agreement.

(c) Local agent records and reports under s. ATCP 74.25.

(d) Local agent procedures, including licensing, inspection, complaint handling, investigation, and enforcement procedures.

(e) Local agent costs, license revenues, license fees, and related accounting and financial management.

**Note:** The evaluation under sub. (1) will normally be patterned, in part, after evaluation procedures outlined in the "Voluntary National Retail Food Regulatory Program Standards" issued by the United States food and drug administration.

**(2) THREE-YEAR ON-SITE EVALUATION.** At least once every 3 years, the department shall conduct an on-site evaluation of a local agent's retail food program. The department shall evaluate the program for compliance with this subchapter and the agent agreement. The department may, as part of its evaluation, conduct survey inspections of retail food establishments licensed by the local agent. In lieu of conducting its own evaluation, the department may accept an equivalent evaluation conducted by the Wisconsin department of health services pursuant to a cooperative agreement with that department under s. 93.06 (11), Stats.

**History:** CR 07-093: cr. Register December 2008 No. 636, eff. 1-1-09; **renum. from ATCP 75.12 Register June 2016 No. 726; correction in (1) (c), (2) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.**